

Circuit Court of Appeals

For the Ninth Circuit

WILLIAM PAPPAS, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of the Record

*Upon Writ of Error From the United States District
Court for the District of Idaho, Eastern Division.*

Filed

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Assignment of Errors.....	61
Bail in Error.....	65
Bill of Exceptions.....	16
Citation	73
Clerk's Certificate	75
Indictment	7
Judgment	15
Minute Entry	19
Order granting Writ of Error.....	59
Petition for Writ of Error.....	60
Praeceptum to Clerk.....	69
Return to Writ of Error.....	74
Stipulation for record.....	58
Stipulation for the settling, allowance and filing of Bill of Ex- ceptions	70
Stipulation as to time within which to prepare, settle and file Bill of Exceptions.....	70
Verdict	15
Writ of Error.....	71

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District of Idaho;

Boise, Idaho;

Attorneys for Defendant in Error.

UNITED STATES OF AMERICA,

vs.

WILLIAM PAPPAS,

Defendant.

INDICTMENT.

Charge: White Slavery. Violation Act of June 25, 1910, 36 Stat., Chap. 395.

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the district of Idaho, Eastern Division, in the name and by the authority of the United States of America, upon their oaths, do find and present:

That heretofore, to-wit: On or about the 15th day of July, A. D. 1916, at Rock Springs, State of Wyoming, William Pappas did then and there wilfully, unlawfully and feloniously transport, and cause to be transported, one Zella Pappas, a woman, as a passenger by and upon a certain route of interstate commerce of a certain common carrier engaged in interstate commerce, to-wit, Oregon Short Line Railroad Company, from the said Rock Springs, Wyoming, to Pocatello, in the County of Bannock, State and District of Idaho, and within the jurisdiction of this court, for the purpose of prostitution of her, the said Zella Pappas.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America,

Zena Pappas,
Robert Lewis,
Geo. Smith,
Chas. A. Baldwin,

H. L. Hartvigsen,
Leon Bone,
Pearl Collins,
Mrs. Joe Dyett.

Endorsed: Filed Oct. 10, 1916.

W. D. McReynolds, Clerk.

MINUTE ENTRY.

At a stated term of the District Court of the United States for the District of Idaho, held at Pocatello, Idaho, on Wednesday, the 11th day of October, 1916.

Present:

Hon. Frank S. Dietrich, Judge.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

Comes now the United States District Attorney with the defendant and his counsel, R. M. Terrell, Esq., into court, the defendant to be arraigned upon the indictment heretofore presented against him by the grand jury, charging the defendant with the crime of white slavery. The defendant, in answer to the court, stated that his true name was William Pappas, the reading of the indictment was waived and the defendant furnished with a true copy thereof upon order of the court.

The defendant waiving time in which to plead, asked leave of the court to plead at this time, where-

thereupon set the cause for trial at 10 o'clock A. M. Tuesday, October 17th, 1916, to follow the trial of cause No. 476.

Thursday, October 19, 1916.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

This cause came regularly on for trial before the court and a jury; the Assistant United States District Attorney with the defendant and his counsel, R. M. Terrell, Esq., being present. The Clerk under direction of the court proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper, to serve as a jury in this trial. There being an insufficient number of names in the box to complete the jury, the court directed that a special venire issue to the Marshal, directing him to summon six persons having the qualifications for trial jurors, to appear for the completion of the panel. On the same day the Marshal made return of the venire, showing service upon six persons to appear at this time for service as trial jurors; whereupon the Clerk under directions of the court placed the names of persons so summoned in the jury box, and proceeded to draw therefrom for the completion of this panel. W. N. Hayslip and J. M. Ervin, whose names were drawn from the

A. Hood, whose name was drawn from the jury box, who was sworn on voir dire, examined and passed for cause, was excused by the court upon the plaintiff's peremptory challenge; following are the names of the persons whose names were drawn from the jury box, who were sworn on voir dire, examined and accepted by counsel for both the plaintiff and defendant, and who were sworn by the clerk to well and truly try said cause and a true verdict render according to the law and evidence, to-wit: L. F. Paris, C. H. Toomer, Frank E. Smedley, William M. Dye, E. T. Young, N. D. Thatcher, F. Corbett, David W. Jones, Edward Grunig, E. G. Wilkins, R. M. Wilson and Dick Arnold.

The indictment was read to the jury, and they were informed of the defendant's plea of not guilty heretofore entered thereto. Whereupon Zella Pappas was sworn as a witness on the part of the plaintiff. Defendant's counsel at this time offered objections to witness testifying herein, on the ground that the witness is the wife of the defendant; the court, after hearing counsel upon the objections, overruled the same. The witness was thereupon examined, and Pearl Collins, Violet Hall, Grace Brown, Robert Lewis, H. L. Harkinson and Charles A. Baldwin were sworn and examined as witnesses and documentary evidence was introduced on the part of the plaintiff, and here the plaintiff rests.

Whereupon the court, after admonishing the jury,

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

This cause came regularly on for further trial before the court and jury. The Assistant United States District Attorney, with the defendant and his counsel being present, the jury was called by the Clerk and all found present.

Whereupon Zella Pappas was recalled, and Edward Marston, John Pattos, William Pappas and L. F. Johnson were sworn and examined as witnesses on the part of the defendant, and here defendant rests. On rebuttal Leon Bone was sworn and examined on the part of the plaintiff, and here both sides closed. After the argument of counsel, the jury was instructed by the court, and they retired to deliberate of their verdict, having been placed in charge of J. H. McMillan, a bailiff duly sworn.

On the same day the jury returned into court; the defendant and counsel for both the plaintiff and defendant being present, the jury was called by the Clerk and all found present. The court asked the jury if they had agreed upon a verdict, and they, through their foreman, replied that they had, and thereupon presented to the court their written verdict, which was in the words following:

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM PAPPAS,

Defendant.

VERDICT.

We, the jury in the above entitled cause, find the defendant guilty on the first count in the indictment; and we find the defendant guilty upon the second count; and we find the defendant guilty on the third count. WM. M. DYE, Foreman."

The verdict was recorded in the presence of the jury, then read to them and they each confirmed the same. The court fixed 12 o'clock M., October 21st, 1916, as time for pronouncing judgment herein, excused the jury from further consideration of the cause and discharged them for the term.

Saturday, October 21, 1916.

THE UNITED STATES,

vs.

WILLIAM PAPPAS.

Criminal No. 479.

Comes now the Assistant United States District Attorney with the defendant and R. M. Terrell, Esq., his counsel, into court, this being the time fixed by the court for the pronouncing of judgment herein. Defendant's counsel moves the court for an order in arrest of judgment, which motion was denied. The court thereupon asked the defendant if he had any

it was thereupon ordered and adjudged that the defendant be confined in the United States Penitentiary at McNeil's Island, for a term of twenty (20) months upon each of the three counts in the indictment, the sentence upon each count to run concurrently with the other two.

(Title of Court and Cause.)

VERDICT.

We, the jury in the above entitled cause, find the defendant guilty on the first count of the indictment; and we find the defendant guilty upon the second count; and we find the defendant guilty on the third count.

WM. M. DYE, Foreman.

Filed Oct. 20, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

JUDGMENT.

Now, on this 21st day of October, 1916, the United States District Attorney, with the defendant and his counsel, R. M. Terrell, Esq., came into Court; the defendant was duly informed by the Court of the nature of the indictment found against him for the crime of white slavery, committed on the 15th day of July, A. D. 1916, of his arraignment and plea of "Not guilty as charged in said indictment," of his trial and the verdict of the jury on the 20th day of October, A. D. 1916, "Guilty as charged in the in-

ment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted of the crime of white slavery,

It is hereby considered and adjudged that the said defendant, William Pappas, be imprisoned and kept in the United States Penitentiary at McNeil's Island, State of Washington, for the term of twenty (20) months upon each count in the indictment, said sentence to run concurrently, and it is further ordered and adjudged that said defendant be and is hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

(Title of Court and Cause.)

BILL OF EXCEPTIONS.

(Criminal.)

BE IT REMEMBERED, that on the trial of this cause, in the above entitled court, at the October term, 1916, of said court, the Honorable F. S. Dietrich, presiding when the following proceedings were had, to-wit:

The jury was impanelled and sworn according to law; and thereupon the following proceedings were had, prior to the introduction of any testimony herein:

MR. TERRELL: Might it be understood, your

MR. TERRELL: And also at this time, your Honor, for the purpose of being sure not to waive the rights of the defendant and to require the District Attorney to elect between these counts, it seems that some of the authorities hold that the motion must be made at one stage of the proceedings and some hold that it must be made at another; and therefore, so as not to waive the right, I desire to move formally to require the District Attorney to elect as to which one of the counts he elects to stand upon.

THE COURT: The motion will be denied.

MR. SMEAD: I will call Zella Pappas.

THE COURT: Gentlemen of the jury, to this indictment, which has been read to you, the defendant has pleaded not guilty.

Thereupon, plaintiff, to sustain the issue upon its part, among other, offered the following testimony of the following witnesses, as evidence in chief:

ZELLA PAPPAS, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

By MR. SMEAD:

Q. State your name, please.

A. Zella Pappas.

Q. Where do you live?

A. My home is in Rock Springs.

MR. TERRELL: If your Honor please, may I at this time be permitted to ask this witness one question

THE COURT: Yes.

MR. TERRELL: Q. Were you on the 15th day of July, 1916, married to the defendant in this case?

A. The 29th of June.

Q. Of June?

A. Yes, sir.

Q. And have you been man and wife ever since? Has there been any divorce?

A. No, sir.

Q. You are and have been since the 29th day of June, last, the legal wife of this defendant?

A. Yes, sir.

MR. TERRELL: Upon that showing, your Honor, we object to any testimony being given by this witness, upon the grounds that she is the wife of the defendant and that she cannot be made to testify or cannot testify against the defendant without his permission, which permission, as his counsel, I withhold. I have some authorities which I desire to submit to the Court on that question, if your Honor please (citing authorities and reading therefrom).

After some argument on the question presented, the Court dismissed the jury with the usual admonition as to their conduct during the recess of the Court and a recess was taken until 7:45 P. M., on the 19th day of October, 1916.

Upon the reconvening of the court at 7:45 P. M., October 19th, 1916, and after further argument and consideration, the Court overruled the objection of

THE COURT: Let the witness come forward.

ZELLA PAPPAS, heretofore duly sworn as a witness on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

By MR. SMEAD:

Q. Where do you live, Mrs. Pappas?

MR. TERRELL: May I ask the witness one further question on her voir dire, your Honor?

THE COURT: Yes.

MR. TERRELL: Q. Mrs. Pappas, as the wife of the defendant, Will Pappas, do you object to testifying in this case?

THE COURT: No, you can't ask her that.

MR. TERRELL: I beg your pardon, your Honor.

THE COURT: I thought it was some other matter, but you can't suggest it to her.

MR. TERRELL: That is the only question I desire to ask, your Honor. I thought under the Court's statement that might make a difference.

THE COURT: Yes. Doubtless I didn't understand you. The objection raised to the competency of the witness to testify will be overruled.

MR. SMEAD: Q. Where do you live now, Mrs. Pappas?

A. The Dearborn.

Q. In Pocatello?

A. Yes.

Q. When did you first come to Pocatello?

Q. This year?

A. Yes.

Q. Who came with you, if anybody?

A. My husband.

Q. Is that the defendant?

A. Yes.

Q. Where did you come from?

A. Green River, Wyoming.

Q. How long did you remain in Pocatello at that time?

A. One week.

Q. Where did you stay?

A. At the Crow Hotel.

Q. Where did you go then?

A. I went back home.

Q. Where do you mean by home?

A. Rock Springs.

Q. Wyoming?

A. Yes, sir.

Q. How long were you there?

A. A week.

Q. While you were there did you receive any communication from the defendant, your husband?

A. Yes, sir.

Q. Of what nature?

A. I wrote to him, is all, and he wrote to me, that's all.

Q. He wrote to you?

A. No, sir.

Q. What did you do with it?

A. I haven't got it?

Q. Did you destroy it, or lose it, or what?

A. No, I left it home, I think.

Q. You mean at Rock Springs?

A. Yes.

Q. You haven't it available at this time?

A. No.

Q. Do you know where it is?

A. No, sir.

Q. What did your husband say in that letter that you refer to? What did he say to you in substance in that letter, Mrs. Pappas?

A. He just wrote to me like any other husband would, I guess.

Q. Do you remember anything in particular that he said?

A. No, sir.

Q. Was there anything in that letter besides the written matter?

A. No, sir.

Q. Did you receive more than one letter while you were at Rock Springs?

A. I received two.

Q. Did you receive any registered letter?

A. I received money to come back home on.

Q. Was that in a registered letter?

A. Yes, sir.

Q. Who was that letter from?

A. From my husband.

Q. The defendant?

A. Yes.

Q. Did you leave that letter in Rock Springs, or do you know where you left it?

A. No.

Q. Do you know where it is now?

A. No.

Q. What did that letter say?

A. Just telling me here is money to come home on, is all.

Q. By "home" what do you mean now?

A. Pocatello.

Q. Idaho?

A. Yes, sir.

Q. What did you do with that money?

A. Bought a ticket.

Q. Where to?

A. To Pocatello.

Q. Did you buy the ticket at Rock Springs?

A. Yes, sir.

Q. Did you ride on that ticket from Rock Springs to Pocatello?

A. Yes, sir.

Q. Did you meet your husband when you got here, the defendant?

and so I went across the track.

Q. He wasn't at the Crow Hotel?

A. No.

Q. How did you know where to find him?

A. I just went there, is all.

Q. That is over on the east side of the viaduct here in Pocatello?

A. Yes, sir.

Q. How did you happen to go to the Boise Rooming House?

A. I knew he always stopped there when he was in town.

Q. How did you know that?

A. Because he told me.

Q. Did you find him there?

A. No, he wasn't there; he wasn't in.

Q. Did you stay there?

A. No, sir; I went down town to look for him.

Q. Then where did you go, the two of you go?

A. Went up to our room.

Q. The two of you?

A. Yes, sir.

Q. That is, the rooming house, the Boise House, you referred to before, on the east side of the viaduct, is it?

A. Yes, sir.

Q. How long did you stay at that rooming house from that time on?

A. A month ago.

Q. How long ago?

A. A month.

Q. A month ago?

A. Yes.

Q. What were you doing at that Boise Rooming House? What was your business there, if you had any?

A. I was working there; chambermaid.

Q. Chambermaid?

A. Yes.

Q. Do you know a woman by the name of Pearl Collins?

A. Yes, sir.

Q. Was she stopping there at that time?

A. Yes, sir.

Q. Was Violet Hall stopping there at that time?

A. Yes, sir.

Q. Was Grace Brown there at that time?

A. Yes, sir.

Q. While you were stopping at the Boise Rooming House were you ever approached by any men with improper proposals?

A. Lots asked me, but I told them no.

Q. By proposals I mean improper proposals—not to embarrass you, but to make it plain in the record, I mean proposals concerning sexual intercourse, were those proposals made to you?

A. Yes, sir, but I told them no.

Q. How many?

A. Two.

Q. Two different men?

A. Yes, sir.

Q. You say you were chambermaid there?

A. Yes, sir.

Q. Did you take care of the rooms in the rooming house, was that the purpose?

A. Yes, sir.

Q. Who conducted that rooming house, if you know?

A. Mrs. Peter Cayias.

MR. SMEAD: You may inquire.

CROSS EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, I didn't get either the question or the answer with reference to two proposals that had been made to you while you were working at the Boise Rooming House. Was that indecent proposals that you refer to, by other men?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you consent to either of those proposals?

A. No, sir.

Q. Was your husband present at the time?

A. No, sir.

Q. Or about the premises?

Q. Did you ever tell him about them?

A. No, sir.

Q. Where are you living at the present time here in Pocatello?

A. At the Dearborn.

Q. At the Dearborn?

A. Yes, sir.

Q. Rooming or light housekeeping?

A. Rooming.

Q. With your husband?

A. Yes, sir.

Q. What is your husband engaged in at the present time?

A. He works for John Pattas.

Q. In what kind of a business?

A. In the cigar store.

Q. Do you know where that is located?

A. I don't know what that street is. It is on the other side of town.

Q. On Center street?

A. I guess so; I ain't sure.

Q. The same street that the viaduct is on?

A. Yes, sir.

Q. As a matter of fact, it is in what is called the "Trapp Building," just across the alley from the Commercial Hotel, is it not?

A. Yes, sir.

Q. You lived in Rock Springs, Wyoming, Mrs. Pappas, at the time you were married?

Q. You were working there at the time your husband married you?

A. Yes, sir.

Q. And then you came to Pocatello and stayed at the Crow Hotel for a week and went back to Wyoming?

A. Yes, sir.

Q. How long did you remain there before you came back to Pocatello?

A. One week.

Q. I will ask you if at any time during your married life, or before, as far as that is concerned, your husband ever, directly or indirectly, endeavored in any way to get you to lead a life of prostitution or debauchery?

MR. SMEAD: I object to that question on the ground that, as stated, directly or indirectly, it is calling for the witness to state a conclusion which the jury is here to draw. I don't object to her stating what her husband may have said to her.

MR. TERRELL: I will change the form of the question. I hardly think that could be said to be a conclusion.

Q. I will ask you this question, and take the ruling of the court. I will ask you, Mrs. Pappas, if your husband at any time during your acquaintance with him, either before or after marriage, has ever suggested to you that you engage in the practice of prostitution?

yourself and Mr. Pappas engaged in the practice of prostitution?

A. Since I have been married?

Q. Since you have been married.

A. No, sir.

Q. Have you since you have been married with the defendant engaged in any immoral practice?

A. I don't know.

Q. Do you understand what that means? I will ask you if, since having been married with your husband, you have frequented or been in and about houses of ill fame, since having been married to your husband, and knowingly been about places of ill fame?

A. I have been in hotels, but that is all.

Q. Have you ever, since having been married to your husband, visited any resorts that you did not think people were living the right kind of lives?

A. No, sir.

MR. SMEAD: I object to this question and answer, and this line of questioning, your Honor, as not proper cross examination, and making the witness his own witness.

THE COURT: Overruled. She has answered.

MR. TERRELL: Q. I will ask you, Mrs. Pappas, if, when you came to Pocatello from Rock Springs, Wyoming, I will ask you to state if you did so wilfully and of your own free will and accord, did you? Did you wish to come?

MR. TERRELL: I think, under the allegations of the indictment, your Honor—that is the reason for the question—it is alleged here that she was persuaded, induced and enticed to come here for a purpose, and I think it would certainly be competent upon cross examination to inquire of this witness as to whether or not those things are true. It is the only way we can get at it.

MR. SMEAD: The act states, however, in so many words, whether with or without the consent of the woman in question, and furthermore the implication in the word “persuade” would be that in coming she would wish to come. That is what the word “persuade” implies; that would be the effect of it.

MR. TERRELL: But there are other words—persuade, induce, entice. There is nobody that can answer that question except the defendant and this witness.

THE COURT: Of course, the answer to this question would not negative the idea of persuading or inducing to come, or enticing to come.

MR. TERRELL: I can see that.

THE COURT: The answer would be quite immaterial, of course. If it is answered in one way, its legal effect would be the same as though it were answered in the other, if I understood the question.

(Question read.)

MR. TERRELL: Q. I will ask you, Mrs. Pappas, to state whether or not the defendant in this case persuaded you to return to Pocatello when you returned the last time?

MR. SMEAD: I object to that as calling for a conclusion of the witness. She can state what was done. She has stated what was done. The conclusion embodied in the word "persuade" is another conclusion, which the jury is here to draw, and not the witness.

THE COURT: Sustained.

MR. TERRELL: Formally, for the purpose of making the record, may I ask another question?

THE COURT: Yes.

Q. Mrs. Pappas, did the defendant in this case induce or entice you to come to Pocatello on the last trip?

MR. SMEAD: That is objected to for the same reasons.

THE COURT: Sustained.

MR. TERRELL: Q. I will ask you to state, Mrs. Pappas, whether or not, in any of these letters which you say you received from your husband, or otherwise, state whether your husband ever said anything to you about returning to Pocatello for the purpose of prostitution?

A. No, sir.

Q. Did you, after you left the town of Rock Springs, and arrived at Pocatello, or after the time

MR. SMEAD: I object to that as immaterial and incompetent, and not tending to prove or disprove any of the issues in this case.

THE COURT: Sustained. The intent of the defendant is the material thing, and not of the witness.

Q. You received money from your husband with which to purchase a ticket to come to Pocatello?

A. Yes, sir.

Q. And as I understand your testimony, you had written to him and requested that it be sent?

A. Yes, sir.

MR. SMEAD: Just a moment. I object to that.

THE COURT: She has already answered it.

MR. SMEAD: I object to it as assuming something that the witness didn't state.

MR. TERRELL: Q. I will ask you to state then whether or not you did request your husband to send you the money?

A. Yes, sir.

Q. And what was the purpose of your making that request for him to send you the money?

A. I wanted to come back.

MR. SMEAD: I object to that testimony, your Honor, as incompetent and immaterial, what her purpose was, and I move to strike out the last question and answer on the ground that any letter written by this witness, if it came into the defendant's possession, would be the best evidence of what she said.

seems to me that there are two elements that must necessarily be taken into consideration. It is true that this defendant is the man charged with crime, but in the charging of this crime against the defendant it must necessarily follow that this witness, his wife, plays an important part in that. Now, the intent of the defendant, it is true, is material, and in one sense of the word is the only material thing, first, whether he transported or caused this girl to be transported, and, second, what was the intent, but I don't see any way of arriving at the intent except to inquire into such facts as I have inquired into by this question and other similar questions. I understand the rule to be that intent is determined ordinarily from the acts of the defendant, but where the intent to do something with reference to somebody else is charged it would seem then that also the acts of the person affected would necessarily be competent and material, to throw light upon what the defendant's intent was. That is our theory.

THE COURT: That may very well be. But the objection now is as to the competency of the proof. Possibly the letter, or the contents of the letter, would be material, but the objection is to the competency of oral testimony touching the contents of the letter. I will have to sustain the objection on that ground. The motion to strike out the last question and answer must be allowed.

MR. TERRELL: Q. Mrs. Pappas, I understood

Pocatello the last time? You have mislaid them or left them somewhere?

A. Yes, sir.

Q. And you can not at this time produce them?

A. No.

Q. And I also understood you to testify in response to the questions of the Assistant District Attorney that you didn't remember specifically the contents of those letters?

A. No, sir.

Q. While you were living at the Boise Rooming House, you stated that you were working as a chamber maid?

A. Yes, sir.

Q. For whom?

A. Mrs. Peter Cayias.

Q. What salary did you receive?

A. Twenty-five a month and room and board.

Q. And room and board?

A. Yes, sir.

Q. What was your husband engaged in at that time?

A. He was working for John Pattas.

Q. The same place that he is now engaged?

A. Yes, sir.

Q. And about a month ago, I believe you stated, you left the Boise Rooming House?

A. Yes, sir.

A. From twelve to twelve.

Q. Twelve o'clock noon until twelve o'clock at night?

A. Yes, sir.

Q. Did yourself and your husband occupy this room at the Boise Rooming House jointly?

A. Yes, sir.

Q. During all the time that you remained at that house?

A. Yes, sir.

Q. Did you ever entertain or receive men in that room of yours in your husband's absence, or at all?

A. No, sir.

Q. What were the requirements of your position there? What were you required to do?

A. Just make beds and keep the rooms clean, and cook.

Q. How many rooms in the house?

A. Nineteen.

Q. In that rooming house?

A. Nineteen.

Q. Did it require all of your time and attention to attend to your duties as a chambermaid?

A. Yes, sir.

Q. What were your habits, as to how you conducted yourself or did after the work-day was over, in the evening hours?

A. I went to the show.

Q. Whereabouts?

whether or not you went alone or accompanied by someone else?

A. I went with Mrs. Cayias and Mr. Cayias.

Q. Your husband's shift prevented him from going with you?

A. Yes, sir.

MR. TERRELL: I believe that is all.

RE-DIRECT EXAMINATION:

By MR. SMEAD:

Q. Did you take care of all the rooms in the Boise Rooming House?

A. Yes, sir.

Q. Your work included all of them, did it?

A. How?

Q. Your work was to take care of all of the rooms?

A. Yes, sir.

Q. You stated on cross examination that you had never practiced prostitution since you have been married?

A. Yes, sir.

Q. I will ask you now if you practiced prostitution before you were married?

A. Yes, sir, before.

Q. Where?

A. In Rock Springs.

Q. At the time you met your husband?

A. Before.

Q. I believe you stated on cross examination that your husband had never suggested to you that you engage in the prostitution since you have been married, did you?

A. Yes, sir.

MR. SMEAD: I will ask to have this letter marked as Government's Exhibit A.

Said letter was thereupon marked *Government Exhibit A*.

Q. Handing you this paper marked at the top Government's Exhibit A, I will ask you if you wrote that letter?

A. Yes, sir.

Q. Is that letter true?

A. No, sir.

Q. Why did you write as you did?

A. I wrote more for sympathy, that is all.

Q. Who is "Mae," as addressed in this letter?

A. Mae Everson.

Q. Of Rock Springs, Wyoming?

A. Yes, sir.

MR. SMEAD: I offer this letter in evidence, in connection with her statement on cross examination that her husband never asked her to practice prostitution.

MR. TERRELL: We object to the offer of Government's Exhibit A, upon the grounds and for the reasons that it is a letter which it is admitted was

as this letter is.

THE COURT: Overruled.

MR. SMEAD: With the Court's permission, I don't think I will stop to read that letter to the jury now. It is short and will be read when the argument is had. If the court prefers, however, I will do it in the regular way.

THE COURT: I don't know how material it is. It would be better, of course, to read it now, if it is particularly material, so that the jury will understand.

MR. SMEAD: Very well. (Reading Government Exhibit A.)

"CROW HOTEL.

Pocatello, Idaho, June 30, 1916.

My dearest Mae.

I guess you wont care to hear from me but I do hope you wont turn me down because I took a step I am sorry for—"

MR. TERRELL: Will you suffer an objection there? This letter appears to have been written to Mae Everson, and without the presence of the defendant. Now we think that in view of the fact that it is only offered for the purpose of impeaching this witness' testimony, we concede that that part of it which impeaches her testimony would be competent to read, perhaps, but not the entire letter, unless it

posed from what the District Attorney said that it would be very short, and that it related only to the one matter. Of course, if it is offered only for the purpose of impeaching—

MR. SMEAD: Impeaching her statement in regard to the—

THE COURT: If that part can be segregated.

MR. SMEAD: I don't know that I can, your Honor. In my judgment the whole letter tends to the same effect in substance and specifically.

THE COURT: I think I shall have to permit counsel to read at least the first page, Mr. Terrell. Do you have any objection to the second page? If you do, I think I shall exclude that. I don't think the second page bears directly or indirectly on this particular thing.

MR. SMEAD: No, I don't think it does, except in the effect of the whole letter; it has the same effect which the specific part of it is offered for.

THE COURT: I think if you read the first page it will be sufficient to cover the point in question.

MR. SMEAD: Very well. Then may the record show that I detach the second page of the letter, here in the presence of the court?

THE COURT: Very well. Just read the first page. We will see, when it is necessary for it to go to the jury.

MR. SMEAD (reading):

I gess you wont care to hear frome me but I do hope you wont turn me down because I took the step I am sorry for will you May. God nos I am the unhappiest girl that has ever walked in shoes but as soon as I get well I am going to make some money and good night Zell. You no how I went to work and married bill and here I am 2 days married and wants me to hustle, but when I do it will be for myself to—”

I can't make out that word, but the next word is "it." The word seems to be spelled b-e-t, for "beat" or "bet."

"Mae will you please promiss me you wont tell Mother that I am broken hearted, for I told her in the letter I was happy but I am not nor never will be."

That is the end of the first page.

THE COURT: By the word "Bill" in that letter to whom did you refer?

A. My husband.

MR. TERRELL: We move that the testimony read into the record be stricken out as an impeachment of the Government's own witness.

THE COURT: Overruled.

MR. SMEAD: Q. Did you know Mae Everson, the lady to whom this letter was written, before you were married?

A. Yes, sir.

Q. What did she do there?

A. She run a rooming house.

Q. What was the name of it?

A. Lincoln.

MR. SMEAD: That is all.

RE-CROSS EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, you have testified that you wrote that letter. You also told the Assistant District Attorney that it was not true. What explanation have you to make with respect to the statements contained in that letter?

A. I wrote it just for sympathy, to see if she wouldn't send me my money that she owed me.

Q. What was the occasion for appealing to her sympathy?

THE COURT: To see if she would send money, you say?

A. Yes, sir, that she owed me, five month's wages.

MR. TERRELL: Q. You say the occasion for your appealing to her sympathy was because she owed you money?

A. Yes, sir.

Q. How much money did she owe you?

A. Five months' wages.

Q. Five months' wages?

A. Yes, sir.

Q. You testified in response to opposing coun-

A. Yes, sir.

Q. Of which Mrs. Everson or Mae Everson is the proprietress?

A. Yes.

Q. Prior to the time that you went to work for Mae Everson at the Lincoln Rooming House in Rock Springs where did you stay?

A. Home.

Q. At your mother's?

A. Yes, sir.

Q. Your mother lives in Rock Springs?

A. Yes, sir.

Q. Prior to the time of your going to the rooming house of Mae Everson to work had you ever engaged in prostitution or had any improper relations with men?

A. No, sir.

Q. Did you begin that life while working at this house?

A. Yes, sir.

Q. How old are you, Mrs. Pappas.

A. Nineteen.

Q. When?

A. The 10th of this month.

Q. The 10th of this month?

A. Yes, sir.

Q. Now, this letter was written on the 30th of June?

that, as I understand:

A. Just a week.

Q. And if the things which have been read in evidence here as having been written by you were true, would you have come back to Pocatello?

MR. SMEAD: That is objected to as immaterial.

THE COURT: Sustained.

MR. TERRELL: Q. Did your husband know that you had written any such letter as this?

A. No, sir.

Q. Did he ever see the letter or did you ever tell him anything about it?

A. No, sir.

MR. SMEAD: That is objected to as immaterial also. I don't see how it is material at this time whether he saw it or not.

THE COURT: It isn't material, but she has answered it. Let us get on.

MR. TERRELL: Q. I understand you to say that the statements therein made or read into the record are not true?

A. No, sir.

Q. As a matter of fact?

A. No, sir.

MR. TERRELL: That is all.

MR. SMEAD: If the Court please, I don't care anything about getting the rest of this letter in evidence except in connection with one more question I want to ask this witness in this matter of the wages

order to make my question competent, as I think it is.

THE COURT: I think in view of her statement, you may read the balance of the letter into the record. You may have your exception, if you desire.

MR. TERRELL: I understood that the preliminary stipulation covers all exceptions to all adverse rulings.

THE COURT: Yes. I am permitting him to read this now as rebutting the idea that she wrote it for the purpose of getting the wages which she claims were due her.

RE-DIRECT EXAMINATION:

MR. SMEAD: Taking up the letter, gentlemen, where I left off before:

"I done it more to be my own boss, but give me single life. Mae I love you for you were good to me and I cant stand to stay away frome you. You were better to me than ever my own folks were, so for Gods sake dont you turn me down will you Mae. Well I cant write any more for I cant stand it so be good Mae and tell Frank to do the same and tell tom hello for me.

I remain as ever your Loving pal Zell.

P. S. My address is Mrs. William Pappis, Gen. Del. Please write to me soon and lots of love to you both."

That is all.

MR. TERRELL: That is all.

(Witnesses Pearl Collins, Violet Hall, Grace

And thereupon, Charles A. Baldwin, called as a witness on behalf of the plaintiff, being first duly sworn, among other things, testified that he was a member of the police force in the City of Pocatello, Idaho, during the months of July and August, 1916; that he knew the location of the Boise Rooming House, in the City of Pocatello, Idaho; that, in his official capacity, he went to the Boise Rooming House from time to time during the months of July and August; that he knew by sight the witness, Zella Pappas, the wife of the defendant, William Pappas; that the Boise Rooming House was reputed to be a house of prostitution; that prostitutes in this house and other similar resorts in the City of Pocatello, Idaho, were accustomed to paying fines to the City of Pocatello, Idaho, as vagrants or people without visible means of support; that on one occasion in the month of July, 1916, or the early part of August, 1916, he had a conversation with the witness, Zella Pappas, the wife of the defendant, in which she said: "My God, I would fall dead if I had to go down before that Judge and pay a fine"; that he then left the room and that Zella Pappas followed him and requested him to take her fine to the Police Judge; all of which conversation between the said Charles A. Baldwin and Zella Pappas was objected to by the said defendant, after it had been shown by a question put to the said Charles A. Baldwin upon his voir dire, that such

petent and immaterial.

At the close of the foregoing evidence in chief offered by the plaintiff, counsel for the defendant renewed his motion to require counsel for the plaintiff to elect upon which count of the indictment he would rely; which said motion the Court then and there overruled.

The defendant, to sustain the issue upon his part, then through his counsel offered, among other, the following testimony as his evidence in chief:

ZELLA PAPPAS, heretofore duly sworn as a witness for plaintiff, upon being recalled on behalf of defendant, testified as follows:

DIRECT EXAMINATION:

By MR. TERRELL:

Q. Mrs. Pappas, did you hear the testimony last night of Mr. Baldwin, patrolman, with reference to certain conversations, which he said he had with you sometime during the month of last July?

A. Yes, sir.

Q. Did you have the conversation in terms or words, as related by him, with him?

A. No, sir.

Q. I will ask you to state to the jury the conversation that you did have with Mr. Baldwin.

A. I was sitting on the back porch reading, with Mrs. Cayias, and Mr. Baldwin came up stairs, and she said: "This is my girl," and she said, "I think

she is good to them they are good to her. That is all he said.

Q. Did you ever have more than one conversation with him?

A. No, sir.

Q. What time of day was it that this conversation occurred?

A. That was about eight o'clock in the evening.

Q. In the evening?

A. Yes, sir.

Q. Did you ask him, or did you say you would fall dead if you had to go before the police judge and pay a fine?

A. No, sir.

Q. Did you ask him if he couldn't or wouldn't take your fine to the police judge?

A. No, sir, I never.

Q. At the time that you were working at this rooming house how many ladies altogether were there in or about the house, including yourself and the landlady?

A. Three.

Q. Three besides yourself and the landlady?

A. Yes, sir.

Q. During the time that you worked there to what extent were the other rooms occupied? Were they occupied by any one?

A. No; there was quite a bit of parlor.

Q. There were nineteen rooms, as I understand, in the house?

Hall and Grace Brown and Pearl Collins, did they each occupy a room?

A. Yes, sir.

Q. Who occupied the other sixteen rooms?

A. I don't know. Roomers.

Q. Were they occupied by roomers?

A. Yes, sir.

Q. When you would go to these other rooms to do your work would the beds be in a condition to indicate that they had been occupied by roomers?

MR. SMEAD: That is objected to as leading and suggestive, if the Court please.

MR. TERRELL: Perhaps it is, but I don't think the witness quite understood the purport of the question.

Q. I will ask you to state how you found the other sixteen rooms when you would go about from time to time in the mornings doing your work; what condition would they be in?

A. Just like someone slept in the bed.

Q. Looked like someone had slept in them?

A. Yes, sir.

Q. What street do you enter this rooming house from, Mrs. Pappas?

A. I don't know the street numbers. It is on the other side of the viaduct, just about on the corner there.

Q. You know the street that runs parallel along the railroad track is First Avenue?

across the market is First Avenue. Is the entrance off of that street, where you go up into the rooming house?

A. Yes.

Q. Is there also a rear entrance?

A. To the house?

Q. That you go up from the alley?

A. Yes, sir.

Q. That is the back entrance?

A. Yes, sir.

Q. Now this house is in the shape of a triangle, isn't it?

A. Yes, sir.

Q. That is, it is not square, but shaped in the shape of a triangle?

A. Yes, sir.

Q. When you get up stairs into the rooming house can you describe in a general way how the hallway divides the rooms up stairs?

A. There is a hall runs this way (indicating), and then you come up the steps that way (indicating), and the other hall goes that way (indicating). That is the only way I know.

Q. When you get to the top of the hall, state whether or not there is a hallway that goes straight east. That is east—towards the foothills.

A. That goes to the back porch, comes straight up the front steps and goes to the back porch.

Q. Straight through to the back porch?

A. Yes.

A. Yes, sir.

Q. Where is the office, what is known as the office?

A. They have no office.

Q. Did you say something about a considerable portion of the room was taken up for something else besides rooms?

A. Yes.

Q. What is that, that it is taken up for? What is that part used for?

A. For roomers.

Q. Did you make use of the other parlor; is there a parlor there?

A. Mrs. Cayias uses her room as the office. She has the book in there.

Q. She uses her room for the office?

A. Yes, sir.

Q. As you go up the steps, which side, to the right or left, is the apartment of Mrs. and Mr. Cayias?

A. On that side (indicating).

Q. Would it be on your right-hand side?

A. Yes, sir.

Q. How many rooms did they occupy, one or more?

A. Just the one.

Q. And which side was your room on?

A. It was on this side (indicating), back in the corner.

MR. TERRELL: I believe that is all.

CROSS EXAMINATION:

By MR. SMEAD:

Q. You stated in your examination when you were on the stand before that you didn't spend your evenings around that place.

A. Well, I did until eight-thirty.

Q. Until eight-thirty?

A. Yes.

Q. Then where did you go?

A. Picture show.

Q. Who with?

A. Mr. and Mrs. Cayias.

Q. Every night?

A. Some nights he couldn't go.

Q. Some nights he couldn't go?

A. No.

Q. Why not?

A. He was busy at the coffee house, I suppose.

Q. Did he have a place of business besides the rooming house?

A. Yes, sir.

Q. You say that was a coffee house?

A. Yes.

Q. And he had to be there in the evening, and you and Mrs. Cayias went to the shows alone?

A. Yes, sir.

Q. Did you go to the shows every evening?

did you spend at the Boise rooming house?

A. Didn't spend any evenings.

Q. You and Mrs. Cayias went to the picture shows every night, did you?

A. Yes, sir.

Q. Will you kindly state who took care of that house while you went to the picture shows?

A. Her brother-in-law.

Q. Who was he?

A. Her brother-in-law.

Q. Did he live there?

A. Yes, sir.

Q. What did he do?

A. He worked for his brother in the coffee house.

Q. He worked for the coffee house and took care of the rooms too, did he?

A. Yes, sir.

Q. Where is that coffee house?

A. On the other side of the viaduct.

Q. How far from the coffee house?

A. About four doors from the coffee house.

Q. How would he be able to leave to take care of the rooming house in the evening?

A. There is other men in the coffee house to take care of that.

Q. There are other men in the coffee house?

A. Yes, sir.

Q. Where did they keep the guest register?

A. Yes, sir.

Q. And used that for the office?

A. They kept the book there.

Q. Did the people go in there to register?

A. No. She brought the book out in the hall right by her door.

Q. How do you know so much about that house if you weren't around there except when you were working?

A. I know she let me do my work and she would go renting rooms.

Q. And you know how she took care of people who came there?

A. I know she gave them a room, and that is all.

Q. You know how she had them registered?

A. No, sir, I never looked.

Q. I understood you to say you knew how she kept her book.

A. I know how she kept it in her room and brought it out and let them register.

Q. You have seen her do that in the evenings there too?

A. In the day time.

Q. Do you mean to say people didn't come there to register in the evening?

A. We wouldn't be there in the evening.

Q. You never were there any evening?

A. Just till about eight-thirty. I would come back after the picture show.

Q. Then from ten or a quarter past you were in the Boise House every night?

A. In my room.

Q. You were at the Boise House every night, were you not?

A. Yes, sir.

Q. You say you never talked to Mr. Baldwin, the policeman, but once?

A. No, sir, just once.

Q. As a matter of fact, you didn't say anything to him at all, did you?

A. No, sir.

Q. You didn't say a word to him?

A. No, sir.

Q. All the conversation there was is what you have related?

A. Yes, sir.

Q. Mrs. Cayias said you were her girl?

A. Yes, sir.

Q. And said that you were afraid of the police?

A. Yes, sir.

Q. And he said you needn't be afraid of the police if you were good, that they would be good to you?

A. Yes, sir.

Q. And you didn't say a word in all that conversation?

A. No, sir, I never did.

Q. And Mr. Baldwin's testimony was false, was it?

By MR. TERRELL:

Q. Mrs. Pappas, are you able to state whether the people that occupied the sixteen rooms other than the rooms occupied by these other girls that I have mentioned roomed by the month, or whether they were transients, or do you know?

A. Well, there was just two or three, I think, by the week

Q. Two or three by the week, and the rest transients?

A. Yes, sir.

MR. TERRELL: That is all.

RE-CROSS EXAMINATION:

By MR. SMEAD:

Q. Do you remember going down to the police station in Pocatello on or about the 17th day of August this year?

A. Yes, sir.

Q. Do you remember seeing Mr. Hartvigsen down there?

A. Yes, sir, I seen all the police down there.

Q. Do you remember seeing Mr. Bone, this gentleman seated at my left, there that day?

A. Yes, sir.

Q. You recall the incident, do you?

A. He was sitting there in the chair when I went in.

Q. Do you remember talking to him that day, in the morning—in the afternoon, do you?

A. No, sir.

Q. You didn't say anything to him?

A. No, sir.

Q. I will ask you if about, near or during the evening of that day you stated to Mr. Bone, in Mr. Hartvigsen's presence, that you had been sporting at the Boise Rooming House and giving your husband the money that you made that way?

A. No, sir.

Q. And you are just as sure of that as you are of anything else you have stated, are you?

A. I never said that.

MR. SMEAD: That is all.

RE-DIRECT EXAMINATION:

By MR. TERRELL:

Q. The time counsel refers to, Mrs. Pappas, is that not the time when you were held in the city jail by Mr. Bone as a special agent of the Government, as a witness in this case?

A. Yes, sir.

Q. You never went there voluntarily, but you were taken there under arrest?

A. Yes, sir.

MR. SMEAD: Do you mean to intimate by that question that Mr. Bone took her there under arrest?

MR. TERRELL: Either him or under his direction. I think it was about the time of the preliminary, and she was put under bond, as I understand it, to appear as a witness, is my recollection.

Q. Or were you taken there by some one else?

A. Well, Mr. Smith came up and told Mrs. Cayias that he wanted me down to the police station.

Q. That is Mr. George Smith, the chief of police?

A. Yes, sir. And I was at the butcher shop getting meat at that time, and when I came home she told me, and I went down.

Q. That was after your husband's preliminary?

A. No, that was before, I think.

Q. Was it before or after your husband was arrested?

A. That was before.

Q. Before?

A. Yes.

Q. And you state that you made no such statements as have been asked you?

A. No, sir, not that I remember of.

Q. How?

A. No, sir, not that I remember.

Q. Well, would you have remembered it if you had made such statements as that?

A. I think so.

Q. And are you able to state now whether you made any such statements as that or not?

A. No, sir.

Q. What do you mean when you say "No, sir"—that you did or did not?

A. That I didn't.

MR. SMEAD: I object to that line of questioning. The question was very plain.

MR. SMEAD: I object to that. She has answered that. This is counsel's own witness. He hasn't any right to change the testimony in that way. We object to the question as having already been asked and answered.

THE COURT: She may answer.

(Last question read.)

A. No.

MR. TERRELL: That is all.

RE-CROSS EXAMINATION:

By MR. SMEAD:

Q. You say you didn't make that statement that you remember of?

A. No, sir, I don't remember.

Q. You don't remember making it?

A. No, sir.

MR. SMEAD: That is all.

MR. TERRELL: That is all.

(Witnesses for the defendant, Edgar Marston, John Pattas, William Pappas, L. F. Zundel, were thereupon sworn for defendant, and examined by both counsel.)

Whereupon the defendant rested and Leon Bone called as a witness in rebuttal, on behalf of the plaintiff, being first duly sworn, among other things testified, that he was and is a special agent for the Department of Justice; that his duties embrace the investigation of criminal cases cognizable by the Federal Courts of the States of Utah and Idaho; that on

the defendant; that he saw her twice on the 17th day of August, 1916, at the police station, in Pocatello, Idaho; that on the second occasion it was toward evening and that on the said second occasion she, the said Zella Pappas, the wife of the defendant, William Pappas, said to him, Leon Bone, "that she had been sporting at his, William Pappas's solicitation and giving William Pappas, her husband, the money ever since she had been in Pocatello, except for a while when she was sick;" all of which said conversation, as testified to, was had without the hearing of the defendant, William Pappas, and admitted over the objection of the defendant that it was hear-say testimony.

After the Court instructed the jury, the jury thereupon retired to consider their verdict and returned into Court a verdict finding the defendant guilty on each of the three counts contained in the indictment.

On the 21st day of October, 1916, the defendant was brought before the Court for the pronouncement of judgment and immediately prior thereto counsel for the defendant moved the Court in arrest of judgment on the grounds that the wife of the defendant had been improperly permitted to testify in said action against the defendant and that the evidence legally admissible in said action was not sufficient to support a judgment against the defendant, which said motion was by the Court then and there overruled and judgment was thereupon pronounced, as from said judgment will more fully appear.

Bill of Exceptions in this case, to the action of the Court, and prays that the same may be settled and allowed and signed and sealed by the Court.

The foregoing is duly allowed and settled as the defendant's Bill of Exceptions.

Dated November 27, 1916.

FRANK S. DIETRICH,
Judge.

Endorsed: Filed Nov. 27, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

ORDER GRANTING WRIT OF ERROR.
CRIMINAL.

On motion of Robert M. Terrell and William Edens, Esq., counsel for the above-named defendant, it is hereby ordered that a writ of error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, from the judgment heretofore rendered and entered herein, be, and the same is hereby granted and allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Clerk of the said Circuit Court of Appeals of the United States, for the Ninth Circuit.

It is further ordered that the said defendant be,

the termination of said proceedings in error, conditioned according to law, the same to act as a super-sedeas bond.

Dated this the 24th day of October, 1916.

FRANK S. DIETRICH,
Judge of the United States District Court,
District of Idaho.

Endorsed: Filed Oct. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

PETITION FOR WRIT OF ERROR.

CRIMINAL.

Comes now the defendant herein, and complains and says that on or about the 21st day of October, 1916, this Court entered judgment and sentence herein in favor of the plaintiff and against the defendant, in which judgment and proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which and more in detail appear from the assignments of error which is filed with the petition.

Wherefore, this defendant prays that a writ of error may issue in his behalf out of this Court or out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated,

(Title of Court and Cause.)
ASSIGNMENT OF ERROR.
CRIMINAL.

Now comes the defendant in the above entitled action, in connection with his petition for a writ of error, and makes the following assignment of errors, which he avers occurred upon the trial of the above entitled cause, to-wit:

1. That the United States District Court for the Eastern Division, District of Idaho, erred in overruling the objection of the defendant to the competency of Zella Pappas, wife of the defendant, to testify in said action on behalf of the plaintiff over the objection and without the consent of the defendant.

2. The Court erred in the admission of evidence offered by the plaintiff in the following instances, to-wit:

(a) In admitting in evidence plaintiff's Exhibit "A," being a letter purporting to have been written by Zella Pappas to one May Everson, said letter being in words and figures as follows:

"Pocatello, Idaho, June 30, 1916.

"My dearest Mae:

"I guess you wont care to hear from me but I do hope you wont turn me down because I took

shoes but as soon as I get well I am going to make some money and good night Zell. You know how I went to work and married bill and here I am 2 days married and wants me to hustel but when I do it will be for myself to bet it. Mae will you please promise me you wont tell mother that I am broken hearted, for I told her in the letter I was happy but I am not, nor never will be. I done it more to be my own boss, but give me single life. Mae I love you for you were good to me and I can't stand to stay away from you. You were better to me than even my own folks were, so for God's sake don't you turn me down will you Mae. Well I can't write any more for I can't stand it, so be good Mae and tell Frank to do the same, and tell tom hello for me. I remain as ever your loving pal Zell.

"P. S. My address is Mrs. William Pappas, Gen. Del. Please write to me soon and lots of love to you both."

Said letter being incompetent for the reason that it was in effect testimony given by the wife against the husband in a case wherein such evidence is incompetent and for the further reason that it is a statement to a third party, made without the hearing and without the knowledge of the defendant.

(b) In the testimony given by Zella Pappas, the wife of the defendant, to the effect that on or about the 15th day of July, 1916, the said Zella Pappas

Company from Rock Springs, Wyoming, to Pocatello, Idaho; that she purchased such a ticket; that she used it in traveling on a train of the Oregon Short Line Railroad Company from Rock Springs, Wyoming, to Pocatello, Idaho; that upon arriving in the City of Pocatello, she went to the Crow Hotel, in said City of Pocatello, Idaho, and not finding defendant, her husband, in said hotel she went to the Boise Rooming House in the City of Pocatello, Idaho; that defendant roomed at the said Boise Rooming House in the City of Pocatello, Idaho; that the said Zella Pappas worked as a domestic servant in the Boise Rooming House for the proprietor thereof for the sum of \$25.00 per month and board and room; that she, the said Zella Pappas, and her husband, William Pappas, the defendant, roomed together at said Boise Rooming House from the arrival of the said Zella Pappas in the City of Pocatello, Idaho, to-wit: on or about the 15th day of July, 1916, until the arrest of the defendant, William Pappas, on the charge contained in the indictment in the above entitled action; that she, the said Zella Pappas, wrote the said letter hereinbefore referred to as the plaintiff's Exhibit "A."

(c) In the testimony given by Charles Baldwin, a policeman in the City of Pocatello, Idaho, to the effect that during the latter part of July and the early part of August, 1916, he had conversation with Zella Pappas, the wife of the defendant, wherein she,

Judge of Pocatello, Idaho) and pay a fine (including a fine such as was customarily paid by prostitutes in the City of Pocatello, Idaho, for plying their vocation) and wherein she asked the said witness, Baldwin, if he could not or would not take her fine to the said Judge. All of said testimony being statements purported to be made by Zella Pappas not in the presence or hearing of the defendant, William Pappas, and she being at said time the wife of the defendant, William Pappas.

(d) In the testimony given by Leon Bone, Special Agent of the Department of Justice and a witness for the plaintiff, to the effect that in a conversation with Zella Pappas, the wife of the defendant, had a short time after the 15th day of July, 1916, at the Police Station in the City of Pocatello, when the defendant, William Pappas, was not present and without his hearing, wherein the said Zella Pappas stated, according to the testimony of said Leon Bone, that she, the said Zella Pappas, while rooming in the said Boise Rooming House, had engaged in the practice of prostitution at the solicitation of William Pappas, the defendant, and that she had given William Pappas the money derived therefrom.

III. The Court erred in refusing to allow the motion of the counsel for the defendant, made at the conclusion of plaintiff's testimony, to require the counsel for the plaintiff to elect upon which of the three counts contained in the indictment in said action he would rely upon for the conviction or

different manner in each count.

IV. The Court erred in rendering and entering judgment against the defendant on each one of the three counts contained in the said indictment for the following reasons:

(a) The evidence on each count was insufficient to sustain the judgment rendered and entered on each count.

(b) Legal judgment could not be entered, except upon one of the said three counts contained in said indictment, there being but one offense alleged in the three counts in said indictment.

V. The Court erred in refusing to allow the motion of counsel for the defendant in arrest of judgment.

WHEREFORE, defendant prays that the judgment of the District Court may be reversed.

ROBERT M. TERRELL,

WM. EDENS,

Attorneys for Defendant.

Res., Pocatello, Idaho.

Endorsed: Filed Oct. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

BAIL IN ERROR. CRIMINAL.

We, William Pappas, residing at Pocatello, Bannock County, Idaho, as principal, and E. C. White,

debted to the United States of America in the sum of Five Thousand and no-100 (\$5,000.00) Dollars, lawful money of the United States of America, to be levied of our goods, chattels, lands and tenements, upon this condition:

That if the said William Pappas, the defendant upon whose application a writ of error has been allowed by the District Court of the United States, District of Idaho, to the Circuit Court of Appeals of the United States, for the Ninth Circuit, shall be and appear before said United States District Court of Idaho, on the termination of the proceedings on said writ of error and the receipt and filing of a mandate or other process or certificate, showing the disposition thereof by the said Circuit Court of Appeals, or within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises and not depart said Court, without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

WILLIAM PAPPAS,	(LS)
E. C. WHITE,	(LS)
W. E. TRAPP,	(LS)
JOHN PATTIS,	(LS)
GUST TURLOS.	(LS)

duly sworn, deposes and says: That he resides at Pocatello, Bannock County, in said District of Idaho; that he is a freeholder in the County of Bannock, State of Idaho; that he is worth the sum of Five Thousand and no-100 (\$5,000.00) Dollars, over and above all his just debts and liabilities in property, subject to execution and sale, and that his property consists of real property, to-wit: residence and business property in the City of Pocatello, Idaho, and ranch property in Bannock County, Idaho, and personal property in the City of Pocatello, Idaho.

E. C. WHITE.

Subscribed and sworn to before me this 24th day of October, 1916.

W. D. McREYNOLDS,

(Seal)

Clerk U. S. District Court.

United States of America,

Eastern Division,

District of Idaho,—ss.

W. E. Trapp, a surety on the annexed bail, being duly sworn, deposes and says: That he resides at Pocatello, Bannock County, in said District; that he is a freeholder in the County of Bannock, State of Idaho; that he is worth the sum of Five Thousand and no-100 (\$5,000.00) Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real property, to-wit, residence and business prop-

Subscribed and sworn to before me this the 24th day of October, 1916. W. D. McREYNOLDS,

(Seal)

Clerk U. S. District Court.

Approved: Frank S. Dietrich, Judge.

October 25, 1916.

Endorsed: Filed Oct. 25, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION FOR RECORD ON RETURN OF
WRIT OF ERROR.

IT IS HEREBY STIPULATED, by and between the respective parties to the above entitled cause through their attorneys of record that the following portions only of the record in said cause shall be certified by the Clerk of the above entitled Court to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in response to the writ of error herein, to-wit:

1. Indictment.
2. Minute entry of Clerk, showing plea of defendant.
3. Verdict of Jury.
4. Judgment.
5. Bill of Exceptions.
6. All stipulations entered into by the attorneys for the respective parties.
7. Petition for Writ of Error.
8. Assignment of Errors.

12. Return to Writ of Error.
13. Certificate of Clerk.

J. L. McCLEAR,
United States District Attorney,
District of Idaho,
Attorney for Plaintiff.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for Defendant,
Res., Pocatello, Idaho.

(Title of Court and Cause.)

PRAECIPE TO CLERK.

To Honorable W. D. McReynolds, Clerk of the above
entitled Court:

In response to the Writ of Error in the above en-
titled cause, you are hereby requested to transmit
to the United States Circuit Court of Appeals, those
portions of the record in said cause, which are speci-
fied in the foregoing stipulation, with title page, in-
dex and certificate, as required by the rules of said
Court and the rules of the United States Circuit
Court of Appeals.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for the above
named Defendant.

Endorsed: Filed Nov. 23, 1916.

W. D. McReynolds, Clerk.

TO PREPARE, SETTLE AND FILE BILL
OF EXCEPTIONS.

It is hereby stipulated by and between J. L. McClear, United States District Attorney for the District of Idaho, Attorney for the above-named plaintiff, and R. M. Terrell, Esq., and William Edens, Esq., attorneys for the above-named defendant, that the said attorneys for the defendant may have forty days from the 24th day of October, 1916, within which to prepare, settle and file a bill of exceptions to be used on a review of the above entitled cause.

J. L. McCLEAR,
United States District Attorney,
District of Idaho,
Attorney for the Plaintiff.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for Defendant,
Res., Pocatello, Idaho.

Approved:

FRANK S. DIETRICH, Judge.

November 24, 1916.

Endorsed: Filed Nov. 24, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION FOR THE SETTLING, ALLOW-
ANCE AND FILING OF BILL OF EXCEP-
TIONS.

pared by counsel for the above-named defendant, and served on counsel for the above-named plaintiff, may be by the Court settled, allowed, certified and filed as amended by law and the rules of said Court required, as the defendant's Bill of Exceptions in the above entitled cause.

Dated this the 23rd day of November, 1916.

J. L. McCLEAR,
United States District Attorney,
District of Idaho.

R. M. TERRELL,
WILLIAM EDENS,
Attorneys for the above-named
Defendant.

Endorsed: Filed Nov. 24, 1916.

W. D. McReynolds, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

UNITED STATES OF AMERICA, Plaintiff,
vs.

WILLIAM PAPPAS, Defendant.
WRIT OF ERROR.

The United States of America,
Ninth Judicial District,—ss.

The President of the United States,

To the Honorable Judge of the District Court of
the United States, for the District of Idaho, greeting:

Because in record and proceedings, as also in the

States of Idaho and William Pappas, defendant, a manifest error hath happened, to the great damage of the said William Pappas, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco in said Circuit, on the 23rd day of November next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the United States, this 24th day of October, A. D. 1916, and in the 141st year of the independence of the United States of America.

Allowed by Frank S. Dietrich, United States District Judge.

Attest: W. D. McREYNOLDS,
Clerk of the District Court of the
United States, District of Idaho.

(Seal)

U. S. District Attorney.
J. R. SMEAD,
Assistant U. S. Attorney.

*In the United States District Court, Eastern Division,
District of Idaho.*

UNITED STATES OF AMERICA, Plaintiff,
vs.

WILLIAM PAPPAS, Defendant.

CITATION IN ERROR.

Criminal—479.

United States of America,
Eastern Division,
District of Idaho,—ss.

To the United States of America, the above-named plaintiff, and J. L. McClear, Esq., United States District Attorney for the District of Idaho, Counsel for the above-named plaintiff.

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the Circuit Court of Appeals of the United States for the Ninth Circuit to be held in the City of San Francisco, State of California, on the 23rd day of November, A. D. 1916, pursuant to an order allowing a writ of error filed and entered in the Clerk's office of the District Court of the United States for the Eastern Division, District of Idaho, from a final judgment rendered, signed, filed and entered upon the 21st day of October, 1916, in that certain action, criminal, wherein William Pappas is

why the said judgment be rendered, signed, filed and entered against said plaintiff in error, as in said order allowing said writ of error mentioned should not be reversed and why justice should not be done to and between the parties in that behalf.

WITNESS, the Honorable F. S. Dietrich, United States District Judge, District of Idaho, this the 24th day of October, 1916, and of the independence of the United States of America, the one hundred and forty-first.

FRANK S. DIETRICH,
United States District Judge,
District of Idaho.

Filed this the 24th day of October, 1916.

W. D. McREYNOLDS,
Clerk of United States District Court.

RETURN TO WRIT OF ERROR.

In obedience to the command of the within writ, I herewith transmit to the Ninth Circuit Court of Appeals of the United States, a duly certified transcript of the record and proceedings in the within entitled cause, together with all things concerning the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the United States District Court for the District of Idaho.

(Seal)

W. D. McREYNOLDS,
Clerk of the United States District Court
for the District of Idaho.

do hereby certify that the above and foregoing transcript of pages from 1 to 75, inclusive, contain true and correct copies of the Indictment, Minute Entry of Clerk, showing plea of defendant, Verdict of Jury, Judgment, Bill of Exceptions, Order granting Writ of Error, Petition for Writ of Error, Assignment of Errors, Bail Bond, Stipulation for record on return of Writ of Error, Praeceptum for transcript, Stipulation as to time within which to prepare, settle and file Bill of Exceptions, Stipulation for the settling, allowance and filing of Bill of Exceptions, Writ of Error, Citation, Return to Writ of Error, and Clerk's Certificate, in the above entitled cause, which constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the cost of the record herein amounts to the sum of \$122.95, and that the same has been paid by the plaintiff in error.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 13th day of December, 1916.

W. D. McREYNOLDS,

(Seal)

Clerk.

